



**REGULAR MEETING
MINUTES
for
August 26, 2002, 6:00 p.m.
Art Pick Council Chamber
3900 Main Street, Riverside, CA**

Present: Commissioners Brewer, Davidson, Floyd, Gardner, Hendrick, Howe, Huerta and Ward

Absent: Commissioners Garcia

Chairperson Brewer called the meeting to order at 6:07 p.m. and led in the Pledge of Allegiance.

Motion was made by Commissioner Howe and seconded by Commissioner Huerta to approve the minutes for the July 2002 monthly meeting and the August 12, 2002 case review meeting.

Executive Director's Report & Comments

Executive Director Williams reported on his attendance of the Black Congressional Caucus Forum on Police Misconduct in Inglewood. He said that while it was skewed against law enforcement, there were some interesting things to say and interesting viewpoints. He commented that he was glad it was held in Inglewood and not Riverside. He also said that it was very informative and that he learned a lot, having never been to a function of this nature.

Commissioner's Comments

Commissioner Howe also commented on the meeting in Inglewood, which he attended with Mr. Williams. He said there were a number of speakers; California Attorney General Lockyer, Sheriff Lee Baca and various attorneys. He said that the speaker he got the most from was a sergeant from Dallas P.D. who is also the chairman of the National Black Peace Officers' Association who said that the only way racist officers will change is from the heart.

Commissioner Huerta thanked Chief Leach and the RPD for the assistance she was given in her professional capacity as a nurse practitioner several times over the previous 30 days.

Commissioner Gardner spoke about his ride-along the previous Saturday evening. He said that he had a conversation with the officer with whom he rode about the CPRC. Commissioner Gardner said that by the end of the night he felt that they each had a better understanding of the other's position. Commissioner Gardner concluded by saying that ride-alongs are invaluable, especially to the commissioners who don't have a law enforcement background, in helping them learn more, but also in letting the officers know that

the Commission isn't here for the purpose of ruining someone's career. He again urged the commissioners to do as many ride-alongs as possible.

Public Comments

Ms. Mary Shelton

Hi. I'd like to say that I agree with Mr. Howe's comment, but I also believe that what the National Black Peace Officers' Association president said which is if you don't want excessive force, hold them accountable for it, after which he said send them to prison or something like that and I'm not saying that. But I'm saying hold them accountable. If they commit a crime, hold them accountable for that crime. If they violate an administrative procedure, hold them accountable for that procedure. I mean, they're not doing anybody any favors by protecting officers who continuously use excessive force against civilians. And often times it's the same ones over and over again as Jeremy Morse was a good example of that.

But what I wanted to talk about today was that I finally got the racial and gender breakdown of the Riverside Police Department from Human Resources and I'm a bit concerned because I was looking over it and I discovered that we only have 29 female police officers. So even though our police department is growing, the number of female police officers has remained the same pretty much. And I was concerned when I was comparing statistics from this year and last to see that at one time we had four Hispanic female officers and now, according to the statistical report, we have two, and that confused me as to what happened to those female officers and I think it's important to try to find out. If people believe if they leave during the academy stage, if they leave during their probationary period, it's important to find out why they're leaving. And because I think that female police officers are just as important to law enforcement as male police officers. And I'm a little bit disheartened to see that there is no growth in that area. And I also discovered that at one time we had five Asian-American police officers, according to the EEO report and now we have three. And so it's just things like that, I think because the group of women of color in the Department is so small and the group of Asian-American police officers is so small, maybe they're lacking some sort of support system in the Police Department. I'm also concerned that the majority of field training officers are male; 36 out of 39 of them are male and because, I mean, that way there's less opportunity for female officers to be trained by other women who could help show them the ropes and help them make the transition into an environment that frankly, is pretty male. And I just wanted to pass that along that those are some concerns I have and I'm going to be looking into them because other people in the community I've spoke to are also very concerned and will also be looking into it and I hope to see some growth on the female side because I was very encouraged to find and see some growth on the African-American male population in the Department. They actually had a ? growth in the Department for the first time in a long time and I found that to be very encouraging.

Thank you.

COMMISSIONER HUERTA – As the lone woman on this commission, I want to thank you for your comments, but I do want to say that the Department does have and recognizes the skills and opportunities for women in the Department because they are one of the few departments that do have a woman in their upper management. So your concerns are good, Mary, and I'm not negating them, but I do want to say that it's a good trend and I think the Department does recognize the need and the opportunities and the skills and talents of women in law enforcement. It's an extremely tough job and having been through a reserve academy, I appreciate that what things they do, I don't want to do it. So I don't know where we need to go from this, if we need to do anything at all. But I do want to at least acknowledge that we do have some women who are moving up the ranks in our Department.

TRAINING – Roles of Various Agencies with Respect to Investigating Officer-Involved Deaths

Executive Director Don Williams said that this training session was due to discussions that took place in the early days of the Commission regarding how the Commission would deal with officer-involved shootings. He said that a decision was made by management that if an incident of this nature occurred, it would go through the processes that they currently had and that the case would be given to the CPRC afterward to make their ruling. He said that the commissioners were concerned, however, by the length of time it took for the CPRC to receive all the documentation on the only officer-involved shooting that has taken place since the Commission was formed. He continued by saying that management felt it would be good to hold this training session with speakers from the various agencies involved with investigating officer-involved shootings or deaths.

Chief Deputy D.A. Michael Soccio, Riverside County District Attorney's Office

Mr. Soccio began by saying he was going to speak on the role of the D.A.'s office in officer-involved shootings specifically where someone has died. He said that the D.A.'s office "rolls out" to any incident in which there is a death. He said that as the chief law enforcement officer in the county, the D.A. is in charge of all criminal investigations, but that historically, law enforcement agencies, within their jurisdictions, investigate crimes whether or not there has yet been a criminal finding, and the D.A.'s office gets involved in all suspected criminal cases at some point unless it isn't filed or brought to their attention.

Mr. Soccio said that when there is a shooting, a killing, the D.A. is present from the beginning of the investigation. They are there to assist the local law enforcement agency in their investigation – crime scene investigation, the collection of evidence and helping with search warrants, among other things – and are present during all aspects of the case. He said that from the moment they arrive, they begin a parallel investigation of the incident, which may or may not be as thorough as that done by the local law enforcement agency. He said that their role is flexible enough to take whatever actions are required by the particular circumstances. He also said that the D.A.'s office is present during the interviews of the police officer and all witnesses.

He said that depending on how the investigation goes, they continue a separate investigation. When the local law enforcement agency has completed their investigation, they notify the D.A.'s office and they come to a "staffing." Mr. Soccio said that in Riverside County, the senior members of his department staff every incident where someone dies at the hands of another person to determine whether or not there is criminal responsibility. He said that the D.A.'s role is solely to determine criminal responsibility using the same standards used to determine whether to file criminal charges against anyone – whether or not, ethically, there is sufficient evidence to charge a person with a crime. At the staffing, the local agency presents their information to the D.A. and they determine whether there is enough information to make a decision. This decision is not made in the presence of the investigating agency, but shortly after all information has been presented, a decision is made whether or not to file criminal charges. If they believe that a shooting is a "fair shooting," one that doesn't violate criminal law, the local agency is notified and a letter is then sent to the agency for their records and for the officer's personnel file stating that criminal charges will not be filed. Unless new evidence comes to light, the D.A.'s role comes to an end.

Chairperson Brewer asked if these procedures also applied to any death as a result of a police action. Mr. Soccio said that this process applied to any officer-involved death of a civilian.

Vice-Chair Gardner asked if it would also include a death as a result of a traffic accident. Mr. Soccio said that it would and that it also applied to a death in the jail, although that wouldn't pertain to RPD.

Commissioner Huerta asked if there is an average length of time for these types of cases. Mr. Soccio said that the process is lengthy and noted that he couldn't think of one they'd gotten back in under six

months. He said it's usually at least six months before they see a final product from the local law enforcement agency.

Executive Director Williams said that in Texas, all incidents of this type go to a grand jury, but that that doesn't seem to be the case in California and asked if this method was peculiar to Texas. Mr. Soccio said that the grand jury system just hasn't been utilized in California like it has in other states, although the grand jury is being used now more than it has been in the past. He said that they don't go to the grand jury unless they are seeking an indictment. He said that they used the grand jury during the Miller incident to bring in witnesses who were otherwise reluctant to testify. He also said that grand jury testimony is secret and is never released unless criminal charges are filed.

Commissioner Hendrick noted that the state attorney general, the FBI, and other agencies involved in the Miller case. He asked what criteria are used to select who might "come in" on such a case? Mr. Soccio said that because of the tension in the city at that time, they felt that anyone "who was not from here" and had some law enforcement credibility, would be good. They were selected and were invited to send whomever they chose.

Commissioner Huerta commented that the grand jury is made up of non-paid civilian volunteers. Mr. Soccio confirmed this. He noted, however, that a grand jury can now be made up of members of the jury pool for a particular day in addition to the other grand jury members.

Captain Frank Robles, Riverside County Sheriff Coroner's Office

Capt. Robles began by giving a brief history of the Sheriff / Coroner operation in Riverside County, noting that Riverside County is the largest Sheriff / Coroner operation in California. He said that there are three ways in which to run a coroner operation; an elected coroner, an elected sheriff / coroner, or an appointed medical examiner.

Capt. Robles said that his office becomes involved in any death where an officer is present, even if they aren't directly responsible for the death and that the death will be handled as a coroner review case. He said that the difference between the coroner's investigation and other investigations is that the coroner is looking for the cause and the manner of death and is based on medicine and science. He noted that because of the nature of the work, they are able to be more exact in their investigative conclusions.

Capt. Robles said that they are involved in any incident involving a death if a law enforcement officer is involved in any way. In the coroner review process several different people are sent to the scene: the deputy coroner handling the death investigation, the deputy coroner who will present the coroner review, a supervising deputy coroner to see that everything is done properly, and a lieutenant so that a County officer of rank is on-scene. However, the only person who actually "goes in" is the deputy coroner who is doing the death investigation. The others are gathering information and supervising, respectively.

Capt. Robles went on to explain the nature of the coroner review. He said that it is a closed hearing and the only people invited to this review are the agency involved but not the officer involved, the grand jury, the District Attorney's office and someone from the Sheriff's Academy. The sheriff personally chairs all coroner reviews, makes the final determination and signs the death certificate as to the cause and manner of death. Once this determination has been made as to the cause and manner of death, that is the only information that will be given to the media.

He said that in 1999, they handled 20 cases. They handled 21 in 2000, 23 in 2001 and as of August 25, 2002, they had handled only eight, which he said he finds surprising, but for which he also has no explanation. He also noted that the Sheriff / Coroner's office enjoys very good relations with both RPD and the District Attorney's office, which makes it much easier to get through the process.

Capt. Robles said that the coroner review takes precedence over anything else they might be working on.

He said that because their conclusions are based on medicine and science, they are always sending samples to various labs for toxicology and other tests. He said that the turn around time can be six weeks, which he said is quick, to a couple of months. By the time they complete all their reports, it can take from four to six months.

Capt. Robles said that when someone dies, two things occur immediately. First, when a person is pronounced dead, the body becomes the property of the Riverside County Sheriff Coroner's Bureau. The second is that the body starts to decompose and depending on where the death has occurred, the rate of decomposition can affect the way in which they "read" things and that they need to be aware of this. He said that while the crime scene belongs to the local law enforcement agency, the body is theirs. He said that officers are not allowed to look under the body or move the body once death has been pronounced without the presence or permission of a deputy coroner.

Chairperson Brewer asked if, once the coroner had completed their report and had turned it over to the local agency, that information could then be turned over to a body such as the CPRC. Capt. Robles said that once they do that, they also send the death certificate to Vital Stats, a state agency, and becomes public record.

Commissioner Howe asked if an officer can look for identification on a body if a coroner isn't on-scene. Capt. Robles said that the only exception to that rule is in traffic accidents and noted that the law is very specific with regard to that. He said that an officer can search the deceased to look for a donor card because if the deceased is a donor, it is important to acquire the organs as soon as possible. Other than that, an officer has to wait for a deputy coroner to arrive.

Commissioner Huerta asked if the County contracts the people doing the autopsies or if they were employees of the Coroner's office. Capt. Robles said that at one time they were contracted, but they are now all County employees. He said that they have four forensic pathologists on staff with a fifth one who is currently in background investigation. He also said that they are the only Sheriff / Coroner operation in the state that has two morgues.

Commissioner Huerta asked if the pathologists sit in on the coroner review. Capt. Robles said that they do. He said that the people in attendance besides the sheriff include the under-sheriff, the chief deputy coroner, all staff on the scene except the person who did the death investigation, the doctor who conducted the autopsy, the toxicologist who conducted the lab tests, and himself. After the various presentations are made, questions are taken from members of the audience, which is the grand jury, the D.A. and agencies involved.

Commissioner Huerta asked if the toxicologists were also County employees. Capt. Robles said they are not. Commissioner Huerta asked if they were out-of-state. Capt. Robles said they are local, but that it depends on what is being done. He said that there are some DNA tests that are sent out of state, which of course, takes longer.

Commissioner Gardner asked what the typical time frame is from time of death to the completion of the case. Capt. Robles said that because they are given priority, autopsies are usually done within a few days of death and request that all tests be expedited. He said that they are still looking at four to six months to complete everything.

Commissioner Huerta if the Coroner has access to records or reports on a decedent taken to a hospital. Capt. Robles said that they do and noted that they can get medical records whenever they need them, whereas a law enforcement agency has to subpoena medical records. He did note that those records are for their eyes only and can't give that information to anyone.

Commissioner Floyd asked what becomes public at the conclusion of their investigation - the result only or the entire file. Capt. Robles said that besides death certificate, the entire file – the deputy coroner's investigation, the toxicology report, and the autopsy protocol – becomes public record. 6.53.40

Chief Russ Leach, Riverside Police Department

Chief Leach thanked Commissioners Huerta and Gardner for their compliments and invited all the commissioners to go on ride-alongs. He also thanked Mr. Soccio and Capt. Robles for attending this meeting.

Chief Leach acknowledged the commissioners concerns regarding the length of time it takes for the Department to present a completed investigation of a law enforcement activity related death to the Commission. Chief Leach said that based on the information given by the previous speakers, he thought the commissioners could see why it takes so long for the Department to present a completed report to the Commission.

Chief Leach said that the investigation is bifurcated, meaning there is a separation of the investigations; one is a criminal review, which is conducted by the D.A.'s office, and the other is for the Department's review to determine compliance with Departmental policies and procedures. RPD detectives conduct another investigation to determine what occurred to lead the officer to become involved with the suspect.

Chief Leach continued by saying that a "large cast" of people respond to a crime scene. Many times responders bring trainees to the crime scene, RPD crime technicians sometimes bring more than one or two people, Internal Affairs responds and others.

He said that it is not unusual for it to take a "long time" for a report to get through the review process. He said that they look at compliance with RPD policies and procedures with regard to use of force, they interview witnesses, they assist the D.A.'s office in getting their criminal investigation on the use of force underway, and they coordinate with the Coroner's office and their tests, especially the toxicology tests. Chief Leach said that while all this information is needed for their investigation, they also have to respect the officers' rights to have legal and peer representation during all phases of investigation. The Department also has to show care and understanding for the families of those involved in an incident of this nature.

Chief Leach said that the Phaisouphanh case took seven months before it was complete and presented to the Commission. He said he was told that it was one of the quickest turn-arounds in the last several years. He said that they are currently looking at some protocols to speed up the process because both the community and the officers involved have a right to know the outcome of these cases.

Chief Leach thanked the Commission and introduced Pat McCarthy, the RPOA president.

Chairperson Brewer noted that the Commission would be looking at cases of this nature to determine whether or not the officer acted within RPD policy. He said that holding up a case because of the criminal investigation has no purpose and asked if there weren't a way that the Commission could get reports earlier or get the outside investigator involved so a finding could be made. Chief Leach said that if an officer has "criminal exposure," that needs to be handled before the internal process. He said that if the D.A. is looking at indicting an officer for improper or unlawful use of force, which would set the tone for the internal investigation.

Commissioner Davidson commented that he was very impressed by the amount of investigation and procedures that are done for the complaint cases.

Chief Leach noted also that another thing that is looked at in these incidents are the tactics used.

Commissioner Ward said that in the stipulated judgment, the Attorney General stated that some of the

RPD's policies and procedures were inadequate in that if the officers followed them they would be in violation of constitutional and statutory rights. Commissioner Ward said that he'd read the policy on Use of Force and it says that officers should respond to a situation according to their perception of the danger with which they are faced. The policy later says that the officer's conduct must be within state and federal law. Commissioner Ward then asked if an officer's perception could be unlawful.

Chief Leach said that the Use of Force policy to which Commissioner Ward was referring had just been approved by the Attorney General and was one of the 27 items in the judgment and that there was no issue with that. He also said that the policy was drafted out of RCLEA (Riverside County Law Enforcement Association). He said he wasn't sure how to answer the question – perception from reality – and asked if Commissioner Ward had a specific scenario in mind. Commissioner Ward asked which raised to the highest level – the law or the officer's perception – and if the law is the standard then the officer's perception must be within the law.

Chief Leach used an example of an officer shooting someone who he thought – mistakenly – was armed or the subject reached for a certain part of their body and in the "heat of the contact," the officer thought the person was going for a weapon when they were not. While tragic, he noted that it is a perception issue.

Commissioner Ward said that he understood, but that while the courts try to protect the officer, he said the perception can be misused when the officer only has to say that it was their perception that something was taking place, and now it becomes a rule of law rather than the law itself.

Chief Leach said that is why it's so important to identify witnesses early on and have a quick response by all those agencies who would be involved and have another agency such as the D.A. or the Attorney General look at the incident so that it isn't just the word of someone involved in the situation.

Commissioner Floyd noted that one of the functions of the Commission is to investigate the death of any individual that comes about in connection with the actions of a sworn police officer whether or not a complaint has been filed. He said he was interested in the Chief's view of the extent to which the Commission should investigate those incidents.

Chief Leach asked if he meant after the Commission received RPD's report. Commissioner Floyd asked if that was the Chief's view that the Commission wouldn't investigate until after the RPD investigation has been completed. Chief Leach said that the Commission would decide whether or not to initiate a "companion" investigation at whatever stage they felt necessary. He noted that if these are handled the way complaints are handled, questions would be asked, is necessary, and there would be supplementals. But he said that it was the Commission's call and he didn't want to comment on the Commission's charge.

Commissioner Floyd said that the Commission has "grappled" with that charge because it appears that the Commission is supposed to conduct an investigation in those situations. He noted that the Commission also recognizes that the law enforcement investigation of the incident not be compromised. He said in trying to reconcile this, the Commission has had some difficulty in determining when they would have access to information; will there be access to witnesses; will there be access to police officers that are involved in the incident. He then asked to what extent the Chief would see the Department cooperating with the Commission in these types of investigations.

Chief Leach said the Commission should get legal counsel as to their role in this type of investigation. He said the Department has policies, procedures and guidelines that they have to follow. He said that he would rather not get involved in this issue because his role is clear as the Department head. He said that his goal is to have "an objective, thorough, complete, accurate, timely investigation" of his officers' involvement in use of force incidents.

Commissioner Floyd stated that the Commission shares that goal in fulfilling its investigative role. He said that the Commission is having trouble reconciling how they can do a thorough job when so months pass

before receiving a fundamental case file. He said that his question is how much the Department will cooperate with the Commission in its investigations.

Chief Leach said that a level of cooperation has been established, but everything is still “embryonic” and they’re all trying to find a common ground that will allow both the Department and the Commission to do their jobs, while protecting everyone’s rights. He said that he felt there is a good level of communication, but said that he also thinks this is an opportunity to talk about why the investigations take so long.

Mr. Williams said that after the commissioners have had a chance to “digest” the information presented, there will be a meeting, at some point in time, with the Commission, the Chief, the City Manager, and the City Attorney to see if there is a way to handle these incidents.

Commissioner Gardner stated that when an officer is involved in the death of a civilian, they are put on paid administrative leave. He asked if the Chief if he could tell the Commission if there is any information that is collected during that time that could be useful to the Commission in its preliminary work and if it would be appropriate for the Department to share.

Chief Leach said that officers are put on paid administrative leave when involved in this type of incident. He said that it is traumatizing for the officer and said that counseling and legal services are offered. He said that it’s a very delicate situation and that personnel issues are also involved. He said that the length of time on leave depends on the review they get back from the counselor or psychologist. He said that it’s “not a disciplinary time in the penalty box.” They remove the officer from the field so they can get their thoughts together and he said that the “down time” is not only important for the officer, but for the community also.

Commissioner Hendrick asked if it would be possible, in future officer-involved deaths, if the Commission could receive periodic briefings from the Department. He said that the concern of the Commission was that the Phaisouphanh case took so long and nothing was communicated to the Commission about the progress of the investigation.

Chief Leach responded by saying he resists discussing on-going personnel issues, but said they could look into that suggestion.

Commissioner Huerta said that she had not been aware that it took so long for each process of the investigation. She said that it would be nice if an e-mail could be sent to Don to let him know when various stages of the different investigations were taking place. Chief Leach said that RPD could share with the Commission the level at which an investigation in within the Department.

Vote to Approve Proposed Guidelines for Commission Investigations of Citizen Complaints

Motion was made by Commissioner Hendrick and seconded by Commissioner Floyd to approve the Guidelines and was carried unanimously.

Discuss and Vote on the following RPD Policy Recommendation:

The Commission recommends that the Police Department amend all applicable policies to inform officers that they shall write a report when they have information that relates to a juvenile runaway situation.

Commissioner Ward said that he has concerns not over the content of the recommendation, but that the Commission might be “treading in some dangerous waters.” He said that he doesn’t want to send a message to the RPD that they can only be responsible for what is specifically spelled out in the policy manual. He said that he felt the current policy regarding missing persons and runaways was plain in what an officer should do in this type of situation.

The recommendation passed 7 for and 1 opposed.

Closed Session – Case Reviews

Pursuant to Government Code Section 54957, the Commissioners adjourned to Closed Session at 7:22 p.m. to review the following case(s) involving PUBLIC EMPLOYEE PERSONNEL MATTERS:

<u>CPRC CASE NO.</u>	<u>IA CASE NO.</u>
02-030	PC-02-088-131
02-032	PC-02-093-169
02-038	PC-02-113-239
02-042	PC-02-121-167

The Commission adjourned at 9:25 p.m.

Respectfully submitted,

PHOEBE SHERRON
Sr. Office Specialist